IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9333 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DINA INDUSTRIES - Petitioner(s)

Versus

ABHIGAYAL JAYANAND EHARI - Respondent(s)

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Appearance :

MR SANDIP C SHAH for Petitioner(s) : 1,
MR KR KOSHTI for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 27/12/2005

ORAL JUDGMENT

1. This petition is directed against the award dated 5.1.01 passed in Reference LCA No. 2222/94 by the Labour Court , Ahmedabad whereby the petitioner was

directed to reinstate the respondent with contintuity of service with 50% backwages.

2. The petitioner herein is a Manufacturer and Exporter of Readymade Garments having its head office at Ahmedabad and the respondent was working as a Helper in the Tailoring department of the petitioner company. The respondent was terminated from the service w.e.f 19.7.94. Being aggreived by the said action of the petitioner the respondent raised a dispute by way of a reference before the L/C Ahmedabad. The Labour Court after hearing the parties passed the aforesaid award.

3. Mr. Shah learned counsel for the petitioner has contended that pursuant to the award of the Labour Court, the respondent workman has already been reinstated in services. As a result of hearing and perusal of the record I am in complete agreement with the reasonings given by and findings arrived at by the Labour Court while granting reinstatement with contintuity of service to the respondent. Even otherwise, since the respondent workman has already been reinstated the respondent in the interest of

justice it would not be appropriate to disturb the said position at this stage.

4. So far as the aspect of grant of backwages is concerned, the Labour Court has not given any cogent reasons as to on what basis it has awarded the said amount of backwages to the respondent. It appears that backwages have been granted merely on assumption and no concrete reasons have been given. The law on the subject is well settled by the Hon'ble Apex Court. In the case of Ram Ashrey Singh Vs. Ram Bux Singh, reported in (2003) II LLJ 176, it is held that the workman had no automatic entitlement to back wages since it is discretionary and has to be dealt with in accordance with facts and circumstances of each case.

5. In the case of General Manager, Haryana Roadways Vs. Rudhan Singh, reported in JT 2005(6) SC 137 (=2005 (5) SCC 591), after referring to various decisions on the said subject, the Apex Court held that order for payment of back wages should not be passed in mechanical manner, but a host of factors are to be taken into consideration before passing any such order. Paragraphs 10, 11 and 12 read as under:

“10. In Smt. Saran Kumar Gaur and others V. State of Utter Pradesh and others, this Court observed that when work is not done remuneration is not to be paid and accordingly did not make any direction for award of past salary. In State of U.P. And Anr. V. Atal Behari Shastri and Anr, a termination order passed on 15.7.1970 terminating the services of a Licence Inspector was finally quashed by the High Court in a writ petition on 27.11.1991 and a direction was issued to pay the entire back salary from the date of termination till the date of his attaining superannuation. This Court, in absence of a clear finding that the employee was not gainfully employed during the relevant period, set aside the order of the High Court directing payment of entire back salary and substituted it by payment of a lump-sum amount of Rs.25,000/-. In Virender Kumar, General Manager, Northern Railways, New Delhi V. Avinash Chandra Chadha and others, there was a dispute regarding seniority and promotion to a higher post. This Court did not make any direction for payment of higher salary for the past period on the principle “no work no 'pay” as the respondents had actually not worked on the higher post to which they were entitled to be promoted. In Surjit Ghosh V. Chairman and Managing Director, United Commercial Bank and others, the appellant (Assistant Manager in the Bank) was dismissed from service on 28.5.1985, but his appeal was allowed by this Court on 6.2.1995 as his dismissal order was found to be suffering from an inherent defect. His claim for arrears of salary for the past period came to about Rs.20 lacs but this Court observed that a huge amount cannot be paid to anyone for doing no work and accordingly directed that a compensation amount of Rs.50000/- be paid to him in lieu of his claim for arrears of salary. In Anil Kumar Gupta V. State of Bihar, the appellants were employed as daily wage employees in Water and Land Management Institute of the Irrigation Department of Government of Bihar and they were working on the posts of steno-typist, typists, machine operators and peons, etc. This Court allowed the appeal of the workmen and directed reinstatement but specifically held that they would not be entitled to any past salary. These authorities show that an order for payment of back

wages should not be passed in a mechanical manner but host of factors are to be taken into consideration before passing any order for award of back wages.

11. In the case in hand the respondent had worked for a very short period with appellant, which was less than one year. Even during this period there were breaks in service and he had been given short term appointments on daily wage basis in different capacities. The respondent is not a technically trained person, but was working on a class IV post. According to the finding of the Industrial Tribunal-cum-Labour Court plenty of work of the same nature, which the respondent was doing, was available in the District of Rohtak. In such circumstances we are of the opinion that the respondent is not entitled to payment of any back wages.

12.The appeal is accordingly partly allowed and the award of the Industrial Tribunal-cum-Labour Court insofar as it directs reinstatement with continuity of service is upheld by the award regarding payment of 50% back wages is set aside."

6. In the premises aforesaid, this petition is partly allowed. The impugned award dated 5.1.2001 passed by the Tribunal, in reference 2222/94 is modified to the extent that the direction qua granting backwages is quashed and set aside and the order granting reinstatement with continuity of service is confirmed. The award of the Labour Court is modified to the above extent. Rule is made absolute to the above extent with no order as to costs.

(K.S.Jhaveri, J)

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